

United States District Court

For the Northern District of California

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10 IN THE UNITED STATES DISTRICT COURT

11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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13 ORVILLE MEAUX,

No. C 05-3733 CW

14 Plaintiff,

15 v.

16 NORTHWEST AIRLINES, INC.; ERIC
17 EDMUNDSON, individually and as an
employee of Northwest Airlines,
18 Inc.; PROFESSIONAL FLIGHT ATTENDANTS
ASSOCIATION; and DOES 1- 20,
Inclusive,

AMENDED
ORDER GRANTING
DEFENDANT PFAA'S
MOTION TO DISMISS

19 Defendants.

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23 Defendant Professional Flight Attendants Association (PFAA)
24 moves to dismiss Plaintiff Orville Meaux's amended complaint or,
25 alternatively, moves for summary judgment. Plaintiff opposes the
26 motion. In a separate motion, Defendant PFAA, together with its
27 counsel of record, move for an order permitting its counsel to
28 conditionally withdraw from this action. Plaintiff has filed a

1 limited opposition to that motion. The matters were heard on
2 October 6, 2006. Having considered all of the papers filed by the
3 parties and oral argument on the motions, the Court grants
4 Defendant PFAA's motion to dismiss.

5 BACKGROUND

6 The following facts are alleged in Plaintiff's complaint. In
7 1977, Plaintiff began working for Defendant Northwest Airlines,
8 Inc., or its predecessors. During the 1980's, he was stationed in
9 Minnesota. While in Minnesota, Plaintiff filed an employment
10 discrimination complaint, alleging that his supervisor, Defendant
11 Eric Edmundson, imposed a disciplinary penalty on him because of
12 his race. The Minnesota Department of Human Rights concluded that
13 there was sufficient probable cause to support Plaintiff's
14 employment discrimination complaint. Plaintiff then filed a
15 lawsuit against Defendant Northwest, alleging race discrimination.
16 The lawsuit settled.¹ Shortly after settlement, Plaintiff was
17 transferred to Los Angeles, California.

18 While he was based in Los Angeles, Plaintiff satisfactorily
19 performed his job duties; no disciplinary actions were taken
20 against him. In November, 2000, he applied for a position as a
21 purser, a senior flight attendant. Defendant Northwest promoted
22 Plaintiff, and his new position, as a purser, resulted in increased
23 pay and increased responsibility.

24 Although Plaintiff was based in Los Angeles, he resided in the
25 San Francisco Bay Area. When a comparable position based in San

26 ¹ Plaintiff states that the terms of the settlement are
27 confidential.

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1 Francisco was available, Plaintiff applied for the position. He
2 did not know that Defendant Edmundson, his former supervisor, was
3 Defendant Northwest's base manager at the San Francisco
4 International Airport.

5 In November, 2001, Plaintiff was transferred to a new
6 position, as a purser, based at the San Francisco International
7 Airport. On his first day of work, he encountered Defendant
8 Edmundson, who accused him of being late, even though Plaintiff
9 claims he was not. Defendant Edmundson made this accusation to
10 harass Plaintiff in retaliation for Plaintiff previously bringing
11 an employment discrimination complaint against him. After this
12 incident, Plaintiff complained to Defendant PFAA, through its
13 representative Joanne Kazemi, that Defendant Edmundson was
14 harassing him in retaliation for the events that transpired in
15 Minnesota. Ms. Kazemi stated that she did not intend to
16 investigate or follow-up Plaintiff's complaint.

17 In December, 2001, Plaintiff sent a letter to Defendant
18 Northwest concerning Defendant Edmundson's retaliatory behavior.
19 He sent copies of the letter to Defendant Edmundson and Defendant
20 PFAA's representative Ms. Kazemi. Defendant Northwest never
21 responded.

22 On August 2, 2003, Plaintiff was acting a purser on a flight
23 from San Francisco to Japan. There was a disruptive Japanese
24 passenger on the flight. The passenger became highly
25 confrontational with Plaintiff, who was preparing the cabin for
26 landing. Plaintiff attempted to defuse the situation. He asked
27 the passenger not to be disruptive. But the passenger would not

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1 listen and continued his disruptive behavior. Plaintiff then
2 showed the passenger a "Notice of Violation Card," which is used to
3 inform disruptive passengers of the federal airline regulations
4 they are violating and the potential penalties associated with
5 violating those regulation. When the passenger got off the plane,
6 he complained to an agent of Defendant Northwest regarding
7 Plaintiff's behavior.

8 Although Plaintiff had an excellent record and had not
9 violated any rules, on September 29, 2003, Defendant Northwest
10 demoted Plaintiff based on the passenger's complaints. The
11 demotion was without just cause and not based on a reasonable,
12 competent and unbiased investigation. After he was demoted, and
13 removed from the position of purser, Plaintiff's supervisor, Dena
14 Rasmussen, informed Plaintiff that he could write to the disruptive
15 passenger's employer. Plaintiff sent a letter to the passenger's
16 employer describing the incident and the passenger's disruptive
17 behavior.

18 On January 26, 2004, Defendant Edmundson terminated Plaintiff
19 for writing a letter to the employer.² Defendant PFAA filed a

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21 ²Plaintiff attached the termination letter to his declaration
22 in opposition to Defendant PFAA's motion. According to the letter,
23 Defendant Edmundson terminated Plaintiff because Plaintiff violated
24 five of Defendant Northwest's Rules of Conduct for Employees.
25 First, he engaged in conduct detrimental to Defendant Northwest's
best interest when he "sent a lengthy letter to a passenger's
employer falsely alleging that the passenger was disruptive,
unruly, interfered with crew duties and violated Federal Air
Regulations." Meaux Decl., Ex. B. Second, he failed to follow his
"manager's direction to refrain from contacting the passenger
directly regarding his complaint." Id. Third, he provided false
and misleading information when he denied that his manager had
instructed him to refrain from contacting the passenger directly.
Fourth, he failed to cooperate in the investigation when he

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1 grievance based on Plaintiff's demotion and termination, though it
2 later dropped the demotion grievance. Defendant PFAA, however,
3 failed to investigate the facts relating to Plaintiff's demotion
4 and discharge, failed to obtain his entire personnel file and
5 failed to interview key witnesses. It processed his grievance in a
6 perfunctory manner and therefore had insufficient information to
7 evaluate Defendant Northwest's settlement offer, which Plaintiff
8 rejected. Defendant PFAA also processed Plaintiff's grievance in
9 an arbitrary manner when it refused to forward his revised counter-
10 settlement demand to Defendant Northwest and when it elected not to
11 arbitrate his grievance without having performed a reasonable and
12 competent investigation, or any investigation at all.

13 Although not alleged in the complaint, the parties do not
14 dispute that, on March 9, 2005, Defendant PFAA decided not to
15 expend funds on the representation of Plaintiff in arbitration of
16 his grievance. On March 15, 2005, Plaintiff received notice of
17 this decision.

18 On September 15, 2005, Plaintiff filed this suit against
19 Defendant Northwest, Defendant Edmundson and Defendant PFAA.³ He
20 brought claims for violations of the Railway Labor Act (RLA),
21 wrongful discharge in violation of public policy and breach of the
22 implied covenant of good faith and fair dealing. Plaintiff has not
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24 provided false testimony. And, fifth, he failed to use good
25 judgment and common sense when he contacted the passenger's
employer.

26 ³In June, 2004, Plaintiff filed a suit against Defendant
27 Northwest. On September 27, 2005, the Court, in light of Defendant
Northwest's bankruptcy, conditionally closed that case.

1 served Defendant Northwest with the summons and complaint;
2 Defendant Northwest filed for bankruptcy in September, 2005. On
3 July 7, 2006, the Court granted with prejudice Defendant
4 Edmundson's motion to dismiss. Thus, Defendant PFAA is the only
5 remaining Defendant.

6 On July 21, 2006, Plaintiff filed his amended complaint,
7 bringing a single cause of action against Defendant PFAA for breach
8 of the duty of fair representation. Defendant PFAA contends that
9 this sole cause of action against it fails on several different
10 grounds, most of which it previously raised in its opposition to
11 Plaintiff's motion for leave to amend his complaint.

12 **LEGAL STANDARD**

13 Dismissal is appropriate under Rule 12(b)(1) when the district
14 court lacks subject matter jurisdiction over the claim. Fed. R.
15 Civ. P. 12(b)(1). Federal subject matter jurisdiction must exist
16 at the time the action is commenced. Morongo Band of Mission
17 Indians v. Cal. State Bd. of Equalization, 858 F.2d 1376, 1380 (9th
18 Cir. 1988). A federal court is presumed to lack subject matter
19 jurisdiction until the contrary affirmatively appears. Stock West,
20 Inc. v. Confederated Tribes, 873 F.2d 1221, 1225 (9th Cir. 1989).

21 A Rule 12(b)(1) motion may either attack the sufficiency of
22 the pleadings to establish federal jurisdiction, or allege an
23 actual lack of jurisdiction which exists despite the formal
24 sufficiency of the complaint. Thornhill Publ'g Co. v. Gen. Tel. &
25 Elecs. Corp., 594 F.2d 730, 733 (9th Cir. 1979); Roberts v.
26 Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987). In deciding a
27 Rule 12(b)(1) motion, the court assumes the truth of the

1 allegations in the complaint, unless controverted by undisputed
2 facts in the record. Roberts, 812 F.2d at 1177. An action should
3 not be dismissed for lack of subject matter jurisdiction without
4 giving the plaintiff an opportunity to amend unless it is clear
5 that the jurisdictional deficiency cannot be cured by amendment.
6 May Dep't Store v. Graphic Process Co., 637 F.2d 1211, 1216 (9th
7 Cir. 1980).

8 DISCUSSION

9 I. Motion to dismiss

10 Defendant PFAA's motion is based on three arguments: (1) this
11 Court lacks subject matter jurisdiction over the amended complaint
12 because it is preempted by the RLA due to Plaintiff's failure to
13 exhaust contractual grievance procedures; (2) Plaintiff's amended
14 complaint is time-barred; and (3) Plaintiff has failed to plead or
15 establish facts sufficient to support a cognizable claim for the
16 breach of duty of fair representation. Because the Court dismisses
17 Plaintiff's claim, for failure to pursue contractual grievance
18 procedures, the Court need not address Defendant PFAA's second and
19 third arguments.

20 As noted above, Defendant PFAA argues that the Court lacks
21 subject matter jurisdiction over the amended claim for breach of
22 the duty of fair representation because Plaintiff failed to exhaust
23 mandatory contractual remedies and thus his claim is preempted
24 under the RLA. This is the second time Defendant PFAA raises this
25 argument. It first raised this argument in its opposition to
26 Plaintiff's motion for leave to amend his complaint.

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1 In its order granting Plaintiff leave to file his amended
2 complaint, the Court cited Czosek v. O'Mara, 397 U.S. 25 (1970).
3 In Czosek, the Supreme Court held that a suit against a union for
4 breach of its duty of fair representation is "not subject to the
5 ordinary rule that administrative remedies should be exhausted
6 before resort to the courts." 397 U.S. at 27 (noting that a claim
7 against a union for breach of its duty of fair representation is "a
8 discrete claim quite apart from the right of individual employees
9 expressly extended to them under the Railway Labor Act to pursue
10 their employer before the Adjustment Board").

11 In its current motion, Defendant PFAA acknowledges the Court's
12 prior ruling. But it notes that the Supreme Court in Czosek held
13 that a claim for the duty of fair representation did not require
14 exhaustion of administrative remedies. Here, Defendant PFAA argues
15 that Plaintiff's claim against it should be dismissed because
16 Plaintiff failed to exhaust his contractual remedies. Defendant
17 PFAA cites cases not previously cited, supporting its argument that
18 Plaintiff's duty of fair representation claim requires exhaustion
19 of contractual remedies available under the collective bargaining
20 agreement.

21 In Carr v. Pacific Maritime Ass'n, 904 F.2d 1313, 1317 (9th
22 Cir. 1990), the Ninth Circuit explained that the requirement that
23 employees must exhaust contractual grievance procedures before
24 bringing an action against their employer for breach of the
25 collective bargain "applies with equal force to claims brought
26 against a union for breach of the duty of fair representation."

1 The Ninth Circuit repeated this requirement in Croston v.
2 Burlington Northern Railraod. Co., 999 F.2d 381 (9th Cir 1993),
3 overruled on other grounds by Hawaiian Airlines, Inc. v. Norris,
4 512 U.S. 246 (1994),⁴ one of the cases Defendant PFAA cites for the
5 first time. See also Beriault v. Local 40, Super Cargoes and
6 Checkers, ILWU, 501 F.2d 258, 266 (9th Cir. 1974) (although court
7 had jurisdiction, under 28 U.S.C. § 1337, to entertain suits for
8 breach of the duty of fair representation, the court dismissed the
9 unfair representation claim against the union because the plaintiff
10 failed to pursue contractual grievance procedures).

11 Plaintiff responds that Czosek is the law of this case and
12 argues that Croston was wrongly decided.⁵ As noted above, however,
13 Czosek held that administrative exhaustion is not requirement; it
14 did not hold that an employee bringing a claim for breach of the
15 duty of fair representation need not exhaust contractual grievance

17 ⁴In addition to holding that an employee is required to
18 exhaust contractual grievance procedures before bringing a claim
19 against a union for breach of the duty of fair representation, the
20 Croston court also held that an employee's State handicap
21 discrimination claim was preempted by the RLA. 999 F.3d at 387-89.
22 In Hawaiian Airlines, Inc. v. Norris, 512 U.S. 246 (1994), the
23 Supreme Court held that a State law cause of action is not
24 preempted by the RLA if it involves rights and obligations existing
25 independent of the collective bargaining agreement. Thus, the
26 portion of Croston holding that a State handicap discrimination
27 claim is preempted by the RLA is no longer good law. The holding
that an employee, bringing a duty of fair representation claim,
must exhaust her or his contractual grievance procedures, however,
remains good law.

28 ⁵In Plaintiff's opposition, he states that, based on Defendant
29 PFAA's bad faith conduct in bringing this motion, he seeks
substantial sanctions from Defendant PFAA in the amount of his
attorneys' fees. Because sanctions are not properly requested in
an opposition, the Court will not address Plaintiff's request. See
Civ. L.R. 7-8.

1 procedures. Furthermore, as the Court explained at the hearing on
2 this motion, the Court is required to follow Ninth Circuit law,
3 even if it is, as Plaintiff contends, wrongly decided.

4 Here, Defendant PFAA informed Plaintiff that, although it
5 would not fund his arbitration, he had the right to pursue his
6 grievance against Defendant Northwest to arbitration. But he did
7 not pursue his grievance. Because Plaintiff failed to exhaust the
8 contractual grievance procedures available to him, the Court must
9 dismiss his claim for breach of the duty of fair representation.

10 II. Motion to permit conditional withdrawal of counsel

11 Defendant PFAA, together with its counsel, move for an order
12 permitting its counsel of record to withdraw conditionally from
13 this action. At the hearing on Defendant PFAA's motion to dismiss
14 or, in the alternative, for summary judgment, defense counsel
15 withdrew this motion. Defense counsel will continue to represent
16 Defendant PFAA until judgment is entered in this case.

17 CONCLUSION

18 For the foregoing reasons, the Court GRANTS Defendant PFAA's
19 Motion to Dismiss (Docket No. 67).⁶ Plaintiff's claim against
20 Defendant PFAA is dismissed for failure to pursue contractual
21 grievance procedures. Defendant PFAA's Motion to Permit

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24 ⁶Both parties submitted numerous objections to the other
25 parties' evidence. To the extent that the Court relied upon
evidence to which there is an objection, the parties' objections
26 are overruled. To the extent that the Court did not rely on such
evidence, the parties' objections are overruled as moot. The Court
27 has not relied on any inadmissible evidence in deciding this
motion.

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1 Conditional Withdraw of Counsel of Record (Docket No. 89) has been
2 WITHDRAWN.

3 IT IS SO ORDERED.

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5 Dated: 10/18/06

Claudia Wilken

6 CLAUDIA WILKEN
7 United States District Judge